

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 UNITED STATES OF AMERICA, Case No. 1:10-cr-384

5 Plaintiff,

6 vs. CLEVELAND, OHIO
7 FRANK P. RUSSO, DECEMBER 15, 2010

8 Defendant.

9 TRANSCRIPT OF SENTENCING PROCEEDINGS
10 BEFORE THE HONORABLE KATHLEEN M. O'MALLEY
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Government: Ann C. Rowland,
14 *Assistant United States Attorney*
15 For the Defendant: Roger M. Synenberg, *Esquire*
16 For Probation: John Riffle

17 Official Court Reporter: Sarah E. Nageotte, RDR, CRR, CBC
18 United States District Court
19 801 West Superior Avenue
20 Court Reporters 7-189
21 Cleveland, Ohio 44113
22 (216) 357-7186

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24
25 Proceedings recorded by mechanical stenography, transcript
 produced by computer-aided transcription.

1 (Proceedings commenced at 3:58 p.m.)

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3 COURTROOM DEPUTY: Your Honor, the case before
4 the Court this afternoon is United States of America versus
15:58:41 5 Frank Russo, Case Number 10-cr-384.

6 THE COURT: Okay. Before we begin, and so I
7 don't forget to mention this, I've been informed that there
8 was some tussling and pushing and shoving out on the plaza
9 on the way in for these proceedings, and it was essentially
15:59:03 10 conduct that doesn't reflect well on anyone in the City of
11 Cleveland.

12 So I'm not going to order marshals to be involved with
13 an ingress and egress to the Court, but I am going to ask
14 everyone to please be respectful of everyone else and to
15:59:19 15 make sure that we don't have a repeat of that activity on
16 the way out.

17 Okay. We're here today for a sentencing of this
18 defendant. As you all know, the Court accepted a guilty
19 plea from the defendant on September 16th of this year
15:59:37 20 pursuant to a substantial plea agreement between the
21 Government and the defendant that was executed near that
22 time.

23 The plea agreement is one that is pursuant to Rule
24 11(c)(1)(C), which means that the parties not only agreed to
15:59:55 25 certain stipulations and recommendations to the Court, but

1 in what is unusual in the pleas that I see, the parties also
2 agreed to a sentence certain in this matter.

3 It is ultimately up to the Court to determine whether
4 to accept that agreement, but I note that the agreement
16:00:16 5 is -- is binding on both sides in that if the Court
6 sentences the defendant to anything higher or other than the
7 sentence agreed to, the Government is not bound by this
8 agreement. If the -- I'm -- if I sentence the defendant to
9 anything other than what is agreed to, the defendant is not
16:00:35 10 bound by this agreement.

11 I also note that this agreement is interconnected with
12 the agreement of defendant Vince Russo, such that if the
13 Court takes an action which would allow either party to
14 vitiating this agreement and the parties decide to do so, that
16:00:55 15 agreement, that other plea agreement would be vitiating as
16 well.

17 So with that recognition in mind, it's still important
18 for the Court to walk through the sentencing process and
19 calculations in this case and to address a variety of
16:01:11 20 matters that are yet unresolved, such as the scope of
21 restitution owed by the defendant.

22 So, first, the Court turns to the first step of its
23 sentencing calculation, which is to determine what an
24 application of the sentencing guidelines would properly call
16:01:30 25 for in this case.

1 In this case, as I said, the parties were very
2 specific with respect to the calculations that they engaged
3 in, but I want to walk through to make sure that the parties
4 remain in agreement with the calculations in light of the
16:01:49 5 Presentence Investigation Report, and I want to address the
6 objections to the report that were made.

7 So, first, as I understand it, the parties agree that
8 we begin with a base offense level of 14, that we increase
9 that base offense level by two because the -- there were
16:02:10 10 more than -- there was more than one bribe involved. We
11 then increase that level by 16 because the value of the
12 payment or the bribes, as the parties have stipulated for
13 purposes of loss calculation, is placed between 1 million
14 and 2.5 million.

16:02:34 15 The -- there is a four-level increase because the
16 offense involved an elected official or public official in a
17 high-level decision making or sensitive position, and then
18 there is a four-level increase because the defendant is
19 properly characterized as a leader or organizer vis-a-vis
16:03:00 20 the criminal activity with which he is charged.

21 The parties also agree that it is appropriate to add a
22 two-level increase for obstruction of justice for the
23 reasons outlined and explained in the plea agreement, which
24 would put the defendant at a total adjusted offense level of
16:03:23 25 42 with respect to the first group of counts, those

1 having -- those essentially constituting the conspiracy and
2 related counts, so the Hobbs Act conspiracy, conspiracy to
3 commit bribery concerning programs receiving federal funds,
4 conspiracy to commit mail fraud and honest services fraud,
16:03:46 5 tampering with a witness, mail fraud, and the last Hobbs Act
6 conspiracy count.

7 The one issue that was open and as to which an
8 objection was raised is that the probation officer
9 recommended an additional two-level increase under 3B1.3(a)
16:04:07 10 on grounds that the defendant abused a position of public or
11 private trust in a manner that significantly facilitated the
12 commission or concealment of the offense.

13 The defendant, through Mr. Synenberg, objected to this
14 increase on grounds that it had not been included in the
16:04:30 15 Presentence Investigation Report, and after doing some
16 research and analyzing the question, it appeared to the
17 Court that -- that that increase, while factually there's no
18 doubt that there was an abuse of a position of trust, that
19 the increase is not appropriate in circumstances where the
16:04:52 20 base offense level actually encompasses the concept of abuse
21 of trust.

22 After consulting with the probation officer, the
23 Probation Office has agreed with the Court and, therefore,
24 we all agree with Mr. Synenberg that that objection is well
16:05:07 25 taken and that the guidelines themselves specifically

1 disallow that increase in these types of circumstances.

2 So I take it, Mr. Synenberg, that in light of the fact
3 that the Court and the probation officer have now withdrawn
4 that, that your objection is resolved?

16:05:25 5 MR. SYNENBERG: Yes, Your Honor.

6 Thank you.

7 THE COURT: Okay. There was -- let me go back
8 then to the calculations.

9 There's a second grouping and those are the tax return
10 counts, Counts 17 through 21. Here the base offense level
11 is 16, with a two-level increase for the dollar figure,
12 resulting in an adjusted offense level for the second
13 grouping of 18.

14 After consideration of the multiple count adjustment
15 and a reduction for acceptance of responsibility, as I
16 understand it, the parties agree that the appropriate
17 guideline calculation in this case would put the defendant
18 at a total adjusted offense level of 39.

19 Is that correct on behalf of the Government and does
20 the Government move for the third level for acceptance?

21 MS. ROWLAND: Yes, Your Honor.

22 The calculation after acceptance of responsibility
23 would be 39 and we do move for the third level.

24 THE COURT: Okay. And does the defendant
25 agree that 39 is the appropriate adjusted offense level

1 after doing the grouping and combining the two sets of
2 counts?

3 MR. SYNENBERG: We do, Your Honor.

4 THE COURT: Okay. And I take it that both
16:06:39 5 parties agree that though there is one point that is
6 attributed for the defendant's prior conviction, that that
7 one point still puts the defendant in a Criminal History
8 Category I?

9 MS. ROWLAND: The Government agrees, Your
16:06:54 10 Honor.

11 MR. SYNENBERG: We agree as well, Your Honor.

12 THE COURT: All right. At a 39-I, the
13 defendant is in a 262- to 327-month custody range, which,
14 again, is within that contemplated by the parties at the
16:07:06 15 time of the plea.

16 There were a couple other issues that I want to
17 address with Mr. Synenberg as it relates to objections to
18 the Presentence Investigation Report.

19 There was an objection at paragraph two with respect
16:07:25 20 to the date of the Indictment in -- referenced in paragraph
21 153, but I understand that you've withdrawn that?

22 MR. SYNENBERG: I have, Your Honor.

23 THE COURT: Okay.

24 MR. SYNENBERG: We withdraw that objection.

16:07:37 25 THE COURT: All right. There was another

1 issue whereas that the third objection had to do with your
2 objection to the fact that the probation officer has
3 characterized Mr. Russo's retirement account as an asset in
4 listing the financial assets and net worth of the defendant.

16:07:59 5 You objected to that characterization primarily
6 because you have entered into an agreement that some portion
7 of that retirement account would be withdrawn and forfeited
8 to the Government and that the remainder would not be
9 subject to attachment by the Government; is that correct,
16:08:16 10 Mr. Synenberg?

11 MR. SYNENBERG: It is, Your Honor. Yes, Your
12 Honor.

13 THE COURT: Okay. The -- I agree with Mr.
14 Riffle that it's technically an asset and it's certainly one
16:08:29 15 that he should have included in his references of the
16 defendant's assets for the Court's consideration.

17 But in light of the -- the agreement that the
18 defendant has entered into with the Government, Mr.
19 Synenberg is technically correct that it's not an available
16:08:44 20 asset. I don't think that that means that we need to amend
21 the Presentence Investigation Report.

22 Do you think that that's necessary, Mr. Synenberg?

23 MR. SYNENBERG: No, Judge.

24 I principally wanted the Court to understand that it
16:08:57 25 is not an available asset and I think you -- you understand

1 our argument, so I don't know that you need to amend the
2 report at this time.

3 \$225,000, as you are aware, of that asset will be
4 received we believe in January from OPERS and when we do
16:09:19 5 receive that, we're going to give, as part of our agreement,
6 \$155,000 to the Government and the remainder will go toward
7 paying taxes.

8 THE COURT: Okay. The last objection is
9 simply that the probation officer indicated that it's --
16:09:38 10 that the probation officer believed that the Court might
11 find a fine to be appropriate in these circumstances.

12 Your argument is that given his assets and net worth
13 and other -- other financial obligations, that there is
14 simply nothing there for a fine, so it's simply a debate
16:10:01 15 over how the Court should interpret this list of assets.

16 Is that fair, Mr. Synenberg?

17 MR. SYNENBERG: That's fair, Your Honor.

18 THE COURT: Okay. But do you think that
19 there's any need for an actual change in the Presentence
16:10:13 20 Investigation Report?

21 MR. SYNENBERG: No. I believe that the Court
22 understands that Mr. Russo is unable to afford a fine at
23 this point in time and that's our argument and it's up to
24 the Court what to do with that.

16:10:23 25 THE COURT: Okay. And as the probation

1 officer pointed out in response to your objection,
2 obviously, the Court has to consider restitution and
3 Internal Revenue Service debts prior to being able to even
4 consider what might be available for a fine, and so, the
16:10:40 5 scope of those obligations may ultimately determine the
6 issue.

7 MR. SYNENBERG: Very well.

8 Thank you.

13 MS. ROWLAND: No, Your Honor.

14 Thank you.

16:10:59 15 THE COURT: Anything else relating to the
16 Presentence Investigation Report on behalf of the defendant?

17 MR. SYNENBERG: Not on behalf of the
18 defendant, Your Honor.

19 THE COURT: Okay. All right. Then the Court,
16:11:10 20 with the exceptions that I've noted, otherwise adopts the
21 Presentence Investigation Report as its findings of fact and
22 sentencing calculations in this matter.

23 The first step of the Court's sentencing determination
24 then lands us, as I said, at a Criminal History Category I
16:11:30 25 and a total adjusted offense level of 39, which puts the

1 defendant in a 262- to 327-month custody range.

2 The next step of the Court's sentencing determination
3 is to consider whether or not there's any guideline-based
4 bases for a departure in this matter.

16:11:48 5 Both parties have agreed in the plea agreement that
6 there are no such bases at this time and that neither is
7 seeking a departure with respect to -- or a departure from
8 these guideline calculations under the guidelines.

9 Is that correct on behalf of the Government?

16:12:07 10 MS. ROWLAND: Yes, Your Honor.

11 THE COURT: Is that correct on behalf of the
12 defendant?

13 MR. SYNENBERG: Yes, Your Honor.

14 THE COURT: All right. And then, the Court
15 normally at this point turns to the third step of the
16 sentencing determination, looking at all of the factors
17 under 18 U.S.C. 3553(a) and considering the calculations
18 of -- or what is recommended by the guidelines to determine
19 what the most appropriate sentence for this defendant in
20 these circumstances is.

21 In this case, the parties have agreed, as I said, not
22 only not to seek a variance based on the Court's application
23 of those factors, but the parties have agreed that they
24 believe that a proper application of all of those factors
16:12:50 25 would result in a sentence specific in this case, which is a

1 sentence to the low end of the guideline range in this
2 matter.

3 Is that correct on behalf of the Government?

4 MS. ROWLAND: Yes, Your Honor.

16:13:04 5 THE COURT: Is that correct as it relates to
6 the parties' understanding on behalf of the defendant?

7 MR. SYNENBERG: It is, Your Honor.

8 THE COURT: Okay. Obviously, the Court still
9 has both the obligation and discretion to consider all the
16:13:15 10 factors under 3553(a), taking into account the implications
11 of any decision it would make to vary from the parties'
12 agreement, so the Court does need to at least keep in mind
13 factors relating to the nature and circumstances of the
14 offense, the history and characteristics of the defendant,
16:13:38 15 the need for the sentences to be -- any particular sentence
16 to be imposed, as well as sentencing disparities or any
17 issues relating to restitution as -- for the victims of the
18 defendant's offense.

19 Before I turn to the issue of custody, I want to
16:14:00 20 address the issue of restitution. There are some
21 complicated restitution calculations in this case. The
22 parties did not agree to a restitution figure in the plea
23 agreement. What the parties did was agree to a methodology
24 by which certain monies would be paid to the Government,
16:14:23 25 either by the date of sentencing or within a specified

1 timeframe thereafter, but beyond that, the parties did not
2 agree to a specific restitution figure.

3 So I'm going to turn now to the Government to address
4 the restitution calculations that the Government would
16:14:43 5 propose in this case.

6 MS. ROWLAND: Thank you, Your Honor.

7 The total restitution figure that the Government seeks
8 in this case is \$6,970,000 -- I'm sorry -- \$6,970,905, and
9 it's broken down as follows by count of the Information:

16:15:09 10 Count 1 charges the extensive kickback scheme
11 involving VAS and the commercial appraisal contracts. The
12 estimated loss to the county on this scheme of the
13 Indictment is \$11.5 million.

14 In previous proceedings, this Court ordered Bruce
16:15:35 15 Zaccagnini to pay restitution on this scheme of \$3,215,845
16 and did not order that it be joint and several with
17 co-defendants. To date he has paid \$589,000 -- \$589,503.

18 This Court on a previous occasion ordered Mr.
19 Armstrong to pay \$1,089,452.79 and he has paid that amount.

16:16:07 20 We have forfeited from the estate of Louis Damiani
21 \$3,406,394.21.

22 In addition, total payments that have been made
23 through forfeiture and otherwise by Santina Klimkowsky on
24 this scheme total \$103,100.

16:16:30 25 So the total paid by co-defendants to date is

1 \$5,298,349, which would leave a balance owed with respect to
2 this scheme of \$6,301,551, and the Government would request
3 that this be ordered joint and several with Mr. Zaccagnini
4 and Ms. Klimkowski, who have not yet paid the total amount
16:17:00 5 they've been ordered to pay.

6 And eventually, as you know, we have charged Mr.
7 Mitchell with this scheme as well, so further proceedings
8 might affect the number of people who would be responsible
9 for this amount.

16:17:16 10 Count 2 involves --

11 THE COURT: Well, wait a minute. Let me back
12 up.

13 As to Mitchell, you're saying you want it joint and
14 several with Zaccagnini, Klimkowski, and Mitchell, but
16:17:24 15 Mitchell hasn't been convicted of anything?

16 MS. ROWLAND: Correct. Correct.

17 THE COURT: Okay.

18 MS. ROWLAND: Count 2 involves the
19 Alternatives Agency bribery scheme. There the amount of the
16:17:33 20 bribes is approximately \$8,000.

21 Mr. Kelley and Mr. Schuman have been convicted on the
22 scheme and Mr. Dimora is charged in the scheme. In the plea
23 agreements of Mr. Kelley and Mr. Schuman, they have agreed
24 to pay \$8,000 joint and several with their co-defendants in
16:17:54 25 this case.

1 No -- none of them have made any payments to date, so
2 we would request that the \$8,000 be ordered for this
3 defendant, joint and several with Mr. Kelley and Mr.
4 Schuman, payable to Cuyahoga County, because Alternatives
16:18:13 5 Agency is no longer a going concern, it is no longer in
6 business.

7 Count 3 involves the Kleem conspiracy. The amount of
8 the bribes is approximately \$24,000. Mr. Kleem has agreed
9 to pay that full amount of restitution and, therefore, the
16:18:45 10 Government does not seek any restitution with respect to Mr.
11 Russo.

12 Count 4 involves the Skuhrovec job-buying scheme. The
13 loss to the county is estimated at \$8,200. The Government
14 requests that that be ordered in restitution in this case,
16:19:05 15 joint and several with other defendants, if they are
16 convicted. That would be Mr. Skuhrovec and Mr. Dimora.

17 Count 5 charges the job-buying scheme involving the
18 Engineer's Office and the Auditor's Office and two
19 individuals in each of those offices. The loss to the
16:19:29 20 county is estimated at \$17,755. That would be the amount of
21 the bribes, both cash and limo services. There have been no
22 payments to date.

23 Mr. Payne was charged in this scheme. His case has
24 been dismissed due to his death. Mr. Kelley has agreed in
16:19:53 25 his plea agreement to the \$17,755 restitution figure, but

1 nothing has been paid to date, so we would request
2 restitution in that amount of \$17,755, joint and several
3 with Mr. Kelley.

4 Count 6 charges the Gallucci-election scheme. The
16:20:17 5 loss to the county is estimated at \$53,549, which represents
6 the value of the inflated salary that Mr. Gallucci received
7 over a three-year period.

8 Mr. Gallucci has agreed to pay \$53,549 in restitution.
9 He has paid to date approximately \$25,550 of that and is
16:20:47 10 making monthly payments of \$1,055, so the Government would
11 request that the Court order restitution in the amount of
12 \$12,999, joint and several with Mr. Gallucci.

13 Count 7 charges witness tampering, so no restitution
14 is requested. There's no identifiable financial loss there.

16:21:06 15 Count 8, Paragraph A, charges the Kelley job-buying
16 scheme. The loss to the county there is estimated at
17 \$65,000, that would be \$17,000 per year of increased salary
18 for the years 2003 through 2008.

19 No restitution has been paid to date. The Government
16:21:25 20 requests restitution in the amount of \$65,000, joint and
21 several with Mr. Kelley.

22 Count 8-B charges the Dennis Dooley job-buying scheme.
23 The loss to the county there is estimated at \$85,417, the
24 amount of the bribe and the loss to the county from Mr.
16:21:44 25 Dooley not working full-time. Mr. Dooley was ordered to pay

1 \$25,625, has not paid anything to date, so the Government
2 requests a restitution order in the full amount, \$85,417,
3 joint and several with Mr. Dooley.

4 Count 8-C charges a job-buying scheme involving PE-50.
16:22:13 5 The loss to the county in that scheme is undetermined and
6 the Government does not seek restitution.

7 Count 8-D involves a job-buying scheme involving
8 PE-47. There the loss to the county is \$25,000, that's the
9 value of raises that were given to PE-47 over a five-year
16:22:35 10 period; therefore, we ask that restitution be in the amount
11 of \$25,000.

12 Count 8-E involves Mr. Gabor, the amount of the bribe
13 is \$5,000. The Government requests restitution in that
14 amount which, if Mr. Gabor is convicted on this count, would
16:22:59 15 be joint and several with him.

16 Count 8-F involves PE-49. The loss to the county
17 there is estimated at \$2,000, the amount of the bribe. We
18 would request restitution in that amount.

19 Count 9 involves Mr. Bafna and Mr. Valentin. The loss
20 to the county is estimated at \$5,839 on the Bafna aspect of
21 it and \$4,866 on the Valentin part of it. Both defendants
22 have agreed to pay the full amount and have the capacity to
23 do that, in effect, Mr. Bafna, who was sentenced this
24 morning, has already paid that amount, so we do not request
16:23:50 25 restitution on this count.

1 Count 10 involving Judge Terry involves an estimated
2 loss of \$9,000, the -- the best estimate of the benefit to
3 Mr. O'Malley's client as a result of the interference of Mr.
4 Russo in that case.

16:24:22 5 We would request -- and the loss to the county -- I'm
6 sorry -- and there's also a loss to the county of
7 approximately \$15,000 for political work that PE-54 did on
8 county time.

9 Therefore, we request restitution of \$24,000, which
16:24:38 10 could ultimately be joint and several with Judge Terry.

11 And I will provide the Court with the name and address
12 of the person at American Home Bank that that restitution
13 should go to who was the other party in the litigation.

14 So that the -- the amount for the -- to the county in
16:24:55 15 that count would be \$15,000, the amount to American Home
16 Bank would be \$9,000.

17 Count 11 involving Judge McCafferty, there is no loss
18 that can be determined at the present time in that count, so
19 we request no restitution in that count.

16:25:14 20 Count 12 involving the bribe paid by Ron Romanini in
21 the form of a roof, valued at \$15,000, we request no
22 restitution because Mr. Romanini has agreed to pay the full
23 amount and he has the ability to do that and we expect that
24 he will be doing that in January.

16:25:36 25 Count 13 involves witness tampering, so, again, the

1 Government does not seek restitution.

2 Count 14 involves the bribery related to a commercial
3 property valuation. The loss to the county is estimated at
4 \$51,000. There were other participants involved, one is Ms.
16:26:18 5 Klimkowsky and her involvement was proffer protected,
6 another is Attorney-1 and another is PE-32. Therefore, we
7 ask that the full amount be assessed to Mr. Russo of
8 \$51,000.

9 Count 15 involves bribes paid by PE-53. The loss to
16:26:42 10 the county there is \$355,983 based on the value of
11 overcharges on a county contract. No one else has been
12 charged in that scheme at the present time, and so, the
13 Government requests that the whole amount be assessed
14 against Mr. Russo.

16:27:03 15 Count 16 involving Vincore, there's -- the loss cannot
16 be determined at this time, so the Government seeks no
17 restitution.

18 The remaining counts are tax counts and we would
19 suggest that the Court not order restitution on the tax
16:27:19 20 counts and leave that to the civil processes of the IRS
21 given the substantial amounts of restitution that are owed
22 to Cuyahoga County.

23 Thank you, Your Honor.

24 THE COURT: I assume the Government wants a
16:27:43 25 standard order requiring cooperation with and payment to the

1 IRS once the amounts are determined as part of the judgment
2 entry?

3 MS. ROWLAND: Yes, Your Honor.

4 Although, the IRS will no doubt be deferring to
16:28:01 5 Cuyahoga County as being the primary victim here.

6 THE COURT: On the tax counts?

7 MS. ROWLAND: No, Your Honor.

8 THE COURT: Yeah. That's what I meant.

9 MS. ROWLAND: In the case overall.

10 THE COURT: Right. I understand that.

11 You meant in terms of priority of collection?

12 MS. ROWLAND: Correct.

13 THE COURT: Okay. All right. Mr. Synenberg,
14 there's a lot here. I know that the Government provided you
16:28:23 15 with a copy of their notes, as they did for me.

16 Now, the total restitution amount that the Government
17 is requesting is \$6,970,950. There are some references to
18 potential joint and several liability, but in several cases
19 they are as to defendants who have not yet been convicted of
16:28:44 20 anything, and so, there may, in fact, never be a joint and
21 several obligation as it relates to those other defendants.

22 Do you at this point object to the Government's
23 calculation or have any evidence to present to the Court
24 that the calculations are mistaken?

16:28:59 25 MR. SYNENBERG: No, Your Honor.

1 We accept the representations by the Government as
2 being accurate for purposes of the judgment entry put
3 forward.

4 THE COURT: Okay. Then let me go -- there are
16:29:11 5 a couple other restitution issues that I want to address.

6 I want to make sure that all of the parties'
7 agreements in the plea agreement have been either satisfied
8 or will be satisfied by a date certain.

9 You mentioned earlier that there was an agreement to
16:29:26 10 withdraw monies from the defendant's Ohio Public Employees
11 Retirement Systems account and that it's the defendant's
12 obligation to deliver from that OPERS fund a certified check
13 or money order in the amount of \$155,000 to the Government
14 and to use the remaining funds from the \$225,000 withdrawal
16:29:49 15 to pay taxes.

16 Is that correct?

17 MR. SYNENBERG: Yes, Your Honor.

18 THE COURT: All right. And when do you
19 anticipate that those monies will be forthcoming?

20 MR. SYNENBERG: I believe our agreement calls
21 that we would -- we've agreed to transmit those funds to the
22 Government within two days of our receipt. It's our best
23 estimation we should have them before the end of January.

24 THE COURT: Okay. Is the Government satisfied
16:30:11 25 with simply a reference to within -- within two days of

1 receipt or does the Government want me to set a date certain
2 in the judgment entry?

3 MS. ROWLAND: Your Honor, I think we would
4 prefer within two days of receipt.

16:30:23 5 THE COURT: Okay. All right. Second, the
6 defendant agreed to obtain a cash surrender value of his
7 life insurance policy and to deliver a certified check or
8 money order in the amount of that surrender value to the
9 U.S. Attorney's Office, and I understand that has already
16:30:41 10 been done.

11 Is that correct, Mr. Synenberg?

12 MR. SYNENBERG: It has. Everything has been
13 paid with respect to the cash value of the insurance.

14 THE COURT: Okay. And that \$35,000 figure
16:30:49 15 representing a one-half interest in the purchase price of
16 the defendant's condominium has already been paid?

17 MR. SYNENBERG: It has, Your Honor.

18 THE COURT: All right. Now, turning to the
19 agreement to liquidate the defendant's campaign account and
16:31:05 20 to pay that either to Cuyahoga County, if permissible by
21 law, or to the identified charities in the plea agreement,
22 has that been done?

23 MR. SYNENBERG: It hasn't, Judge.

24 We have written two letters to the Cuyahoga County
16:31:21 25 Prosecutor's Office asking them if they believe there is a

1 claim for the county. Although Mrs. Rowland and I have
2 discussed this, although I haven't heard back from the
3 county, if we haven't heard within ten days, Judge, the plea
4 agreement accounts for us to make equal distributions I
16:31:37 5 believe to nine separate charities and we believe there's
6 approximately --

7 THE COURT: Eight.

8 MR. SYNENBERG: Eight. I'm sorry.

9 THE COURT: That's okay.

16:31:43 10 MR. SYNENBERG: We believe there's
11 approximately \$75,000 in Mr. Russo's accounts.

12 We will make payments to those eight charities within
13 the next ten days unless the county lays claim to these
14 funds.

16:31:56 15 THE COURT: Okay. I mean, all you can do is
16 ask if they have any legal basis by which they're entitled
17 to it, and if they don't respond, there's not much you can
18 do.

19 The last -- or there's two last agreements in the
16:32:16 20 restitution. One is that the defendant agrees to make 30
21 monthly consecutive payments of \$1,500 from his OPERS
22 distribution every month beginning within 60 days of the
23 Court's sentencing order.

24 I assume, Mr. Synenberg, that you have no objection to
16:32:31 25 the Court incorporating that into its judgment entry?

1 MR. SYNENBERG: No objections, Your Honor.

2 THE COURT: All right. And then, the last
3 agreement is the Government's agreement, in light of all
4 these other distributions, from the defendant's OPERS
16:32:44 5 account that the Government would not seek further funds
6 from that account or to collect out of that account the
7 restitution obligation that the Court will impose,
8 recognizing, however, that the Government has full authority
9 to seek restitution from any other source where restitution
16:33:09 10 assets might be available.

11 All right. With that outline, are there any other
12 issues with respect to restitution in this matter?

13 MS. ROWLAND: Not that I'm aware of, Your
14 Honor.

16:33:17 15 MR. SYNENBERG: Not that I'm aware of, Judge.

16 THE COURT: Okay. All right. Then turning
17 back to the analysis of all the 3553(a) factors,
18 particularly relating to the sentencing in this case, Mr.
19 Synenberg, is there anything that you would like to say or
16:33:42 20 the defendant would like to say on his own behalf?

21 MR. SYNENBERG: Your Honor, given the fact
22 that there is an 11(c) (1) (C) agreement, I elect not to speak
23 on behalf of Mr. Russo at this time. However, I do know
24 that Mr. Russo has something that he would like to say to
16:33:57 25 the Court.

1 THE COURT: Okay. Mr. Russo.

2 MR. SYNENBERG: Would you like us to approach,
3 Judge?

4 THE COURT: No. He can stand there, if you
16:34:06 5 like.

6 THE DEFENDANT: My brothers and I were brought
7 up to be honest and always act in an ethical way.

8 I cannot identify the exact time that I strayed from
9 this directive, but there came a point in time in my life
16:34:24 10 when I made a decision to act in a fashion that I can now
11 say was terribly wrong, which I truly regret.

12 I knew better than to act as -- knew better than to
13 act in this way. My decision to accept money and gifts is a
14 decision that I will have to live with for the rest of my
16:34:43 15 life. There are no adequate words to remove that
16 embarrassment and shame. There are no actions I can take to
17 change the past. I wish there were.

18 I truly learned from my mistakes. I apologize. I
19 apologize to my family. I apologize to my friends. I
16:35:04 20 apologize to other elected officials. I apologize to the
21 agents and prosecutors in this case. I apologize to this
22 honorable court system. And also, I apologize to the many
23 citizens of Cuyahoga County who I let down with my actions
24 and poor decisions.

16:35:24 25 I am truly sorry for betraying the trust to everyone

1 who ever mattered to me in my life and I wish to convey my
2 regrets and apologies to all I have hurt.

3 Thank you.

4 THE COURT: All right. Mr. Russo, let me ask
16:35:38 5 you a question.

6 I have to say that I honestly did not recall until I
7 saw the Presentence Investigation Report that you were
8 previously convicted of dereliction of duty in connection
9 with your activities as a public servant.

10 Having been convicted once and pled guilty to that
11 kind of an offense, why -- what is it that didn't stop you
12 from going down this road so much farther?

13 THE DEFENDANT: The case I was involved in was
14 a matter of employees of the Recorder's Office whom I didn't
16:36:18 15 personally hire that were there doing work for title
16 companies and because I was the Recorder, I took
17 responsibility for their actions of dereliction of duty.

18 THE COURT: All right. So you're saying that
19 these are of completely different characters?

20 THE DEFENDANT: Correct.

21 THE COURT: Okay. Again, given the
22 constraints that you have placed on yourself by virtue of
23 the plea agreement, is there any recommendation that you
24 would like to make on behalf of the Government?

16:36:46 25 MS. ROWLAND: No, Your Honor.

1 The plea agreement really says it all in terms of the
2 Government's position in this case. It is a straight
3 application of the guidelines, which are driven by the
4 amount of the bribes in this case, that being between \$1
16:37:08 5 million and \$2.5 million, which resulted in a 16-level
6 increase under the guidelines, and really is a good
7 reflection of the seriousness of this offense.

8 I don't think I need to belabor the seriousness of the
9 series of cases. This Court has commented on that in
16:37:30 10 previous proceedings, as has Judge Adams as recently as of
11 this morning, and it may be decades before we can assess the
12 damage that this investigation has and prosecution has
13 exposed in our county government, as the honest public
14 officials that remain, the honest public employees that
16:37:55 15 remain, and honest business people work hard to try to
16 restore the trust that these citizens deserve in their
17 county government. It's just impossible to determine what
18 the impact of that is.

19 I would like to state, Your Honor, that the Court
20 should be aware of a new development over the past few weeks
21 that may require future proceedings in this case.

22 Mr. Russo, through his attorney, recently approached
23 the Government and indicated an interest in cooperating in
24 this continuing investigation and in testifying, if needed,
16:38:36 25 in cases that are now pending or may be charged in the

1 future in this court.

2 The parties are beginning the process of exploring
3 this offer of cooperation, although the Government made
4 clear to Mr. Russo that we would not agree to a postponement
16:38:51 5 of the sentencing in this case, nor would we agree to a
6 postponement of the agreed reporting date in this case of
7 May 16th.

8 However, the Government is willing to evaluate this
9 offer of cooperation and consider at the appropriate time
16:39:06 10 making a motion under Rule 35 so that this Court can
11 evaluate the nature and extent of the defendant's
12 cooperation.

13 I just wanted to make the Court aware of that since
14 it's about to sentence the defendant.

16:39:20 15 THE COURT: With respect to a Rule 35 or
16 possible Rule 35 motion, does the Government anticipate that
17 it would prepare -- be prepared to make that motion within
18 the one-year timeframe or at least lodge one?

19 MS. ROWLAND: We would certainly lodge one
16:39:35 20 within the one-year timeframe.

21 It's a little difficult to anticipate how events will
22 unfold as a result of Mr. Russo's cooperation, but we would
23 certainly lodge one within the one-year time period.

24 THE COURT: Okay. All right. And you
16:39:50 25 understand, Mr. Synenberg, that while it's possible that

1 there may be additional motions from the Government that
2 might benefit your defendant's -- the defendant's sentence
3 or ultimate sentence in this matter, that given the fact
4 that we are moving forward today, that the Court cannot take
5 any potential cooperation into consideration at this time?

6 MR. SYNENBERG: We understand that, Your
7 Honor.

8 THE COURT: Okay. All right.

(Off-the-record discussion between the
Defendant and Mr. Synenberg.)

11 MR. SYNENBERG: Thank you, Judge.

12 We're fine.

13 THE COURT: Okay. In connection with a Rule
14 11(c)(1)(C) plea, it is usually the Court's assessment or
15 the determination the Court must make is whether to accept
16 the parties' agreement and it's not exactly the same
17 analysis that the Court usually undertakes under 18 U.S.C.
18 3553(a).

Having considered this matter carefully, however, the Court concludes that the two do actually dovetail in this case. The Court does not accept the parties' agreement cavalierly or lightly and ultimately does so through a proper application of the factors under 18 U.S.C. 3553(a).

I will not, as the Government has not, at this time
belabor the seriousness of these offenses. Just going

1 through this restitution analysis shows the scope of the
2 public corruption that was involved and the damage that has
3 been done to this county and this community because of the
4 defendant's actions. Clearly, the nature and circumstances
16:41:45 5 of the offense are severe and warrant a substantial sentence
6 in this case.

7 As it relates to the history and characteristics of
8 the defendant, the defendant, other than the one criminal
9 history point, has no other criminal history and has close
16:42:02 10 family ties in the community, but the defendant also had
11 many of opportunities that -- many opportunities that his
12 family gave him and that this community gave him to live an
13 exciting and active life as a public official and he
14 squandered those opportunities and betrayed the trust that
16:42:22 15 was placed in him by both his family and the community.

16 The -- there is a need for a substantial sentence to
17 address this defendant's conduct. There's a need for a
18 substantial sentence to deter others from criminal activity.
19 And there is a need for a meaningful sentence so that there
16:42:41 20 is an opportunity for the defendant to -- to fully analyze
21 the full impact of the harm to the community.

22 With respect to sentencing disparities, it is true
23 that a number of individuals have been sentenced in this
24 case to much lesser sentences than the Court is about to
16:43:03 25 impose upon the defendant, but that's because those

1 defendants were involved in one scheme or a number of small
2 schemes rather than involved in all of the counts that have
3 been brought against this defendant. So there's no real
4 ability to compare by way of sentencing disparities the
16:43:24 5 sentences that the Court has imposed on others given the
6 scope of the corruption charges here.

7 The -- ultimately, the Court concludes that given the
8 substantial restitution that the defendant will pay to the
9 victims, given the need for a substantial sentence, and
16:43:45 10 given the -- the fact that the guidelines in this case
11 recommend a substantial sentence, that the guidelines got it
12 right, that the parties got it right, and that a sentence of
13 262 months in the custody of the Bureau of Prisons is the
14 appropriate sentence in this case for this defendant and is
16:44:11 15 that sentence which is no more than reasonably necessary to
16 address all of the sentencing factors under 3553(a).

17 So, as I said, the Court is both accepting the
18 defendant's agreement and finding that that agreement is
19 consistent with all of the sentencing factors the Court is
16:44:28 20 to consider, as well as the advice provided by the
21 guidelines.

22 So pursuant to the Sentencing Reform Act of 1984 and
23 to 18 U.S.C. 3553(a), Mr. Russo, it's the judgment of the
24 Court that you're hereby committed to the custody of the
16:44:44 25 Bureau of Prisons to be imprisoned for a term of 262 months.

1 Upon release from the custody of the Bureau of
2 Prisons, you'll be placed on supervised release for a term
3 of three years.

4 To the extent that these apply to a variety of counts,
16:45:02 5 all of the terms, both the custody term and the supervised
6 release term, are to be served concurrently so that these
7 represent totals with respect to your custody and your
8 supervised release.

9 While on supervised release, you will comply with all
16:45:18 10 standard conditions that have been adopted by the Court.

11 There are 13 or 14 such conditions that will be provided to
12 you in writing. Among those is the obligation to refrain
13 from any violation of federal, state or local law, to
14 refrain from the use or possession of any illegal substance,
16:45:34 15 and to refrain from the possession of a firearm.

16 The -- those are only the -- I only referenced those
17 three because those are the ones I see most often in
18 violation hearings, but there are 13 or 14 conditions that
19 you must completely comply with.

16:45:49 20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. The -- in addition to
23 those conditions, there will be a variety of special
24 conditions that you will have to comply with, one of which
16:46:01 25 relates to your restitution obligation.

1 You will pay restitution in this matter in the amount
2 of \$6,970,950. Those -- that -- those restitution figures
3 will be broken down pursuant to or in accordance with the
4 figures that have been provided by the Government. To the
16:46:24 5 extent that the Government has suggested any joint and
6 several responsibilities with respect to defendants who have
7 not yet been convicted of any offense, that -- those will
8 not be ordered to be joint and several at this point in time
9 and may -- and at this point will simply be imposed upon you
16:46:42 10 in your individual capacity pending any further
determinations as to those defendants.

12 The -- your restitution obligation, you can begin to
13 make payments as relating to your restitution obligation
14 through the Bureau of Prisons Inmate Financial
16:47:01 15 Responsibility Program at the rate of \$25 per month while
you are incarcerated.

17 If a restitution balance remains upon your release
18 from imprisonment, you -- you will commence payments on
19 restitution no later than 60 days following release from
imprisonment and you will make those payments at a minimum
21 rate of at least ten percent of your gross monthly income
22 during your period of supervision.

23 The judgment entry in this case will also reflect the
24 30 consecutive payments of \$1,500 each that you are to make
16:47:33 25 to the Government from your OPERS distribution amounts and

1 that is to commence within 60 days of the date of this
2 judgment.

3 Your restitution order is technically due and payable
4 immediately, which means that if there are assets, the
16:47:53 5 Government can levy upon them. To the extent that they have
6 not agreed to avoid any particular asset, the Government
7 could fully reach any assets that might be available.

8 To the extent that those -- that restitution is not
9 fully paid by such actions, the restitution remains a
16:48:13 10 condition of your supervised release and any failure to make
11 attempts to make your payments for your restitution
12 obligation could result in a violation of your supervised
13 release term and possibly a revocation of that supervision.

14 Do you understand that?

16:48:27 15 THE DEFENDANT: Yes.

16 THE COURT: All right. You will also be
17 subject to some special conditions, as I said, as they
18 relate to your -- your financial restrictions to be imposed
19 upon you.

16:48:40 20 You will provide to the probation officer access to
21 any requested financial information and you will not incur
22 any credit charges or open any additional lines of credit
23 without the prior approval of your probation officer.

24 You'll be subject to a windfall condition, which means
16:48:56 25 all monies received from income tax refunds, lotteries,

1 winnings, judgments or other anticipated or unexpected
2 financial gains will be applied against the outstanding
3 court-ordered obligation that I have just imposed.

4 I am not going to impose a fine upon you in this case,
16:49:16 5 despite the fact that there would be a substantial basis for
6 doing so. The Government has agreed not to request a fine
7 because of the importance of attempting to make -- of you
8 attempting to make restitution payments to the county. It
9 is more important if monies are available -- Ms. Bacon,
16:49:38 10 please.

11 MS. BACON: I'm sorry, Your Honor.

12 THE COURT: It is more important if monies are
13 available that they be paid to the victims of the offense
14 rather than into the Clerk of Court in the manner of a fine.

16:49:49 15 You will pay a special assessment, however, of \$2,100,
16 which is due and payable immediately.

17 The Court is going to also impose upon you a standard
18 search condition, which means that your person, residence,
19 place of business, computer or vehicle will be subject to a
16:50:13 20 warrantless search conducted and controlled by the U.S.
21 probation officer at a reasonable time and in a reasonable
22 manner based upon reasonable suspicion of contraband or
23 evidence of a violation of a condition of release. Failure
24 to submit to a search may be grounds for revocation of your
16:50:28 25 supervision.

1 There is also an Internal Revenue Service condition.
2 I am not going to impose a dollar figure restitution amount.
3 I will leave it to the Internal Revenue Service to calculate
4 what monies might be owed and to exercise their discretion
16:50:45 5 with respect to whether and to what extent to collect those
6 monies before your restitution obligation to the county has
7 been completed.

8 You -- but you will fully cooperate with the Internal
9 Revenue Service by filing all delinquent or amended returns
16:51:04 10 and you will timely file any future returns that might come
11 due and owing.

12 You are to properly report all correct taxable income
13 that is owed and you are to work with the Internal Revenue
14 Service to determine if there are any outstanding
16:51:22 15 obligations that you owe and to determine what the most
16 appropriate payment schedule with respect to those
17 outstanding obligations, including any interest or
18 penalties, might be.

19 All right. This is not a drug offense, there's no
20 evidence of drug use, so the Court waives the mandatory drug
21 testing requirements that would otherwise be imposed under
22 the Violent Crime Control and Law Enforcement Act of 1994.
23 That doesn't relieve you of the obligation to refrain from
24 the use of any illegal substance, but given your record and
16:52:18 25 history, the Court sees no basis to impose a drug testing

1 requirement or drug treatment requirement in this case.

2 All right. There are no counts that need to be
3 dismissed?

4 MS. ROWLAND: No, Your Honor.

16:52:35 5 There -- I have two other matters, but I'll wait
6 until --

7 THE COURT: Okay. Well, you can address them
8 now.

9 MS. ROWLAND: First, I may not have spoken
10 clearly. The total restitution amount that the Government
11 is seeking is \$6,970,905, not \$950, a minor point.

12 And I'm wondering if Mr. Synenberg and I could have a
13 moment to consult with the Probation Department about one
14 matter or come to the sidebar or both?

16:53:08 15 THE COURT: Well, why don't you talk to them
16 first and then come and tell me what it's about.

17 (Off-the-record discussion between the U.S.
18 Assistant Attorneys, Mr. Synenberg, and the Probation
19 Department.)

16:54:01 20 THE COURT: Let's approach.

21 (Off-the-record sidebar discussion between
22 the Court, the U.S. Assistant Attorneys, and Mr.
23 Synenberg.)

24 THE COURT: Okay. Let me back up. There is
16:58:25 25 one correction.

1 Because the sentence is so high, it exceeds the
2 statutory maximum for any single count that -- with which
3 the defendant has been charged, which means that while the
4 Court can impose a 262-month sentence upon the defendant, it
16:58:44 5 has to break it up so that there is no doubt that the Court
6 has not exceeded the statutory maximum in any particular
7 instance.

8 So the sentence will be served as follows:

9 240 months as to Count 1, 22 months as to Count 2, to
16:59:15 10 be served consecutive to each other.

11 The other counts, Counts 4 through 14 and 16 and
12 Counts 3, 5, and -- I'm sorry -- 3, 15, 17 through 21 are to
13 be served at the statutory maximum amount and will be served
14 concurrently with each other and with Counts 1 and 2.

16:59:47 15 So the Court will spell it out in the judgment entry.

16 I assume the defendant does not object to the Court
17 making it clear in the judgment entry exactly to what extent
18 this sentence exceeds the statutory maximum on any given
19 count and assures that the counts will properly be accounted
20 for?

21 MR. SYNENBERG: That's fine with us, Judge.

22 THE COURT: Okay. Is that sufficient for the
23 Government?

24 MS. ROWLAND: It is, Your Honor.

17:00:13 25 Thank you.

1 THE COURT: Okay. There is one other issue
2 that I want to put on the record. There is apparently an
3 issue that was not caught as it relates to the information
4 in the Presentence Investigation Report.

17:00:25 5 There's apparently a factual error in the report in
6 that the report attributes 50 percent of the value of the
7 condominium at which Mr. Russo lives to him as an asset.
8 The parties agreed, and the Government agreed, that Mr.
9 Russo is not an owner of that condominium and that to the
17:00:50 10 extent that he has a 50 percent ownership, he has a
11 50 percent ownership in the furnishings, which is what is
12 reflected in the \$35,000 payment to which the defendant
13 agreed in his plea agreement.

14 So the probation officer has agreed to correct that
17:01:06 15 factual information in the report so that there will not be
16 an inaccuracy.

17 With respect to the restitution dollar figure, I don't
18 know, Ms. Rowland, whether you misspoke or I misheard, but I
19 did write it down as 950, but I will correct it, so the
17:01:22 20 restitution obligation is \$6,970,905 exactly.

21 All right. Sir, by virtue of your plea in this case,
22 you have waived your right to appeal from the conviction on
23 all of these counts. By virtue of your plea agreement,
24 you've also waived virtually all of your rights to appeal
17:01:45 25 from the sentence that has just been imposed. This is

1 particularly true because the sentence imposed is one that
2 you agreed to as a sentence certain pursuant to Rule
3 11(c) (1) (C) .

4 There are certain rights that can't be waived,
17:01:59 5 however, in a written plea agreement. Those have to do with
6 your ability to object to the adequacy of the performance of
7 your own counsel or to the ethical performance of the
8 Government's counsel. I simply inform you that these
9 limited rights exist because they can be waived by the
17:02:14 10 passage of time.

11 So you should discuss with Mr. Synenberg at your
12 earliest opportunity whether there's any additional
13 proceedings you wish to pursue in this matter.

14 Do you understand?

17:02:22 15 THE DEFENDANT: Yes.

16 THE COURT: All right. As it relates to the
17 issue of voluntary surrender, does the Government have any
18 objection to a voluntary surrender of this defendant?

19 MS. ROWLAND: No, Your Honor.

17:02:31 20 THE COURT: All right. The defendant has been
21 on bond pending these proceedings, he has been compliant
22 with all of his terms and conditions of release, and has
23 worked with the Government to reach a plea resolution in
24 this matter.

17:02:46 25 For all these reasons, the Court concludes that the

1 defendant is a good candidate for voluntary surrender and I
2 will allow the defendant to voluntarily surrender to the
3 Bureau of Prisons.

4 I will direct the Bureau of Prisons to set the
17:02:59 5 surrender date for May 16th --

6 MS. ROWLAND: Yes, Your Honor.

7 THE COURT: -- 2011, as per the parties'
8 agreement.

9 That means, sir, that you will have to comply with all
17:03:13 10 bond conditions that have been previously imposed upon you,
11 including all reporting conditions that go along with those.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: Any violation of your term of bond
17:03:22 15 could result in immediate custody and to the immediate
16 commencement of your sentence.

17 Do you understand?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Is there anything more
17:03:29 20 for the Government?

21 MS. ROWLAND: No, Your Honor.

22 Thank you.

23 THE COURT: Okay. Any other objections to the
24 sentence for the defendant or anything more you want to
17:03:40 25 address?

1 MR. SYNENBERG: We would respectfully request,
2 Judge, that the Court make a recommendation to the Bureau of
3 Prisons that Mr. Russo be permitted to serve his sentence at
4 FCI Elkton.

17:03:50 5 THE COURT: Okay. I will make that
6 recommendation. It is a recommendation only. As you know,
7 the Bureau of Prisons will have to make its own
8 determination, but I will note the request for Elkton and I
9 will note that that facility is one of the closest
17:04:07 10 facilities possible to his family here in the Northern
11 District of Ohio.

12 MR. SYNENBERG: Thank you, Judge.

13 THE COURT: All right. Anything else?

14 MS. ROWLAND: No, Your Honor.

17:04:13 15 Thank you.

16 THE COURT: Okay. This Court is adjourned.

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18 (Proceedings concluded at 5:04 p.m.)

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2 **C E R T I F I C A T E**

3

4 I certify that the foregoing is a correct transcript
5 of the record of proceedings in the above-entitled matter
6 prepared from my stenotype notes.

7

8

/s/ Sarah E. Nageotte

SARAH E. NAGEOTTE, RDR, CRR, CBC

12/21/2010

DATE

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